

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



FILED
12-05-14
04:59 PM

Application of Soitec Solar Industries LLC for
Modification of Resolution E-4613.

Application 14-12-____

A1412008 (Filed December 5, 2014)

**APPLICATION OF SOITEC SOLAR INDUSTRIES LLC
FOR MODIFICATION OF RESOLUTION E-4613**

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December 5, 2014

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Application of Soitec Solar Industries LLC for
Modification of Resolution E-4613.

Application 14-12-____

(Filed October 8, 2001)

**APPLICATION OF SOITEC SOLAR INDUSTRIES LLC
FOR MODIFICATION OF RESOLUTION E-4613**

I. INTRODUCTION

In accordance with General Rule 7.8 of California Public Utilities Commission (“Commission”) General Order 96-B, and Rules 2.1 and 16.4 of the Commission’s Rules of Practice and Procedure, Soitec Solar Industries LLC (“Soitec”) respectfully submit this Application for Modification (“Application”) of Resolution E-4613 adopted on December 5, 2013 (the “Resolution”). Soitec requests modification of the Resolution to add a condition requiring procurement of electricity from concentrating solar photovoltaic (“CPV”) technology in a quantity at least equivalent to the CPV capacity that was expected to be deployed in the original power purchase agreement (“PPA”) leading up to the Resolution. As explained below, the added condition is needed to restore the technology diversity and economic benefits expected from the approved PPA, which have not materialized.

II. DISCUSSION

A. The Resolution approved the PPA based on an expectation that it would deploy CPV panels manufactured at Soitec’s San Diego factory

The Resolution approved cost recovery for an amended long-term PPA between San Diego Gas and Electric Company (“SDG&E”) and CSolar IV West, LLC (“Amended PPA”) for a solar generating facility to be located in El Centro, Imperial County, California (the

“Project”).¹ The Amended PPA modified the PPA that was originally executed for the Project (“Original PPA”).² The Original PPA contemplated construction of a 96 to 150 MW Project with 100% CPV panels (then known as the “IV West Project”).³ The IV West Project would have deployed up to 150 MW of CPV panels produced at a factory that Soitec agreed to construct in San Diego, thereby providing economic and employment benefits in the local community as well as bringing valuable resource diversity to SDG&E’s renewable portfolio.⁴

The Commission previously approved cost recovery for the Original PPA in Resolution E-4446 (the “Original Resolution”) on December 15, 2011. When the Original Resolution was issued, the new Soitec manufacturing facility was expected to create 450 jobs in California.⁵ While expressing some reservation about related costs, PA Consulting Group (“PA”), the Independent Evaluator for the Original PPA, recommended that “[i]f the CPUC believes that the value to the San Diego economy of a new panel manufacturing facility, plus the value of advancing CPV technology, justify the price differential then it should approve the contracts.”⁶ Thus, the Independent Evaluator’s recommendation to approve the Original PPA was based at least in part on the deployment of locally produced CPV panels that would support the San Diego economy.

The Original Resolution contemplated that Soitec’s CPV technology would be used in the IV West Project, and acknowledged the resulting social and economic benefits:

¹ Resolution, pages 1-2.

² *Id.*, page 2.

³ *Id.*

⁴ See Resolution E-4446 (December 15, 2011), page 4.

⁵ *Id.*, page 5.

⁶ *Id.*, Part 2, page 7-1.

The project will be developed using Soitec's Concentrix™ CPV modules with dual-axis tracking. In AL 2257-E, SDG&E notes that the IV West project will be one of the first utility scale projects to use CPV.⁹ The CPV modules will be manufactured at a new facility to be built in the San Diego area.¹⁰ The IV West facility is expected to provide up to 300 construction jobs, and the new Soitec manufacturing facility is expected to create 450 jobs in California.¹¹

⁹ SDG&E also notes in its reply to SDG&E's October 21, 2011 protest that approval of the PPA will provide technology diversity to SDG&E's portfolio and enable the development and deployment of a new technology that produces more energy on peak than standard PV, providing value to ratepayers.

¹⁰ Soitec press release issued March 10, 2011:
<http://www.soitec.com/en/news/pressreleases/soitec-announces-major-us-cpv-solar-power-project-623/> (accessed October 28, 2011)

¹¹ Ibid. and Imperial Solar Energy Center West factsheet:
<http://www.tenaskasolarventures.com/pdf/Solar-Fact-sheet-West.pdf>
(accessed October 28, 2011)⁷

Approximately a year and a half after the issuance of the Original Resolution, the counterparty to the Original PPA exercised its right to construct the IV West Project using 100% photovoltaic ("PV") panels and zero CPV panels, thus eliminating the use of the locally manufactured Soitec panels.⁸

Facing a loss of potential benefits to the San Diego region due to the elimination of CPV from the Project, SDG&E sought an amendment. As described in SDG&E's Advice Letter filing, the Amended PPA was intended to reinstate the use of the locally manufactured CPV panels in the Project. As described by SDG&E, "[b]ecause of the potential benefits to the San Diego region due to use by CSolar IV West of CPV panels manufactured in San Diego, SDG&E

⁷ *Id.*

⁸ SDG&E Advice Letter 2487-E-A (November 8, 2013), page 1; Exhibit 1, paragraph 4.

entered into the [Amended PPA] with CSolar IV West with the objective of preserving use of some number of CPV panels in the final project.”⁹

The Independent Evaluator updated its report to address the Amended PPA (“Amended IE Report”). The Amended IE Report confirmed that “SDG&E wanted the project still to include concentrating PV (and as much as possible), which it said would better support its service area’s economy.”¹⁰ The Amended IE Report explained that “the benefit associated with approving the [Amended PPA] is that there will still be some likelihood that the plant will employ panels manufactured by Soitec’s factory in the San Diego area.”¹¹ The Amended IE Report recommended approval of the Amended PPA if the Commission determines that the benefits provided by creating additional CPV demand for the Soitec facility in San Diego is critical to obtain the benefits expected in the Original PPA:

PA now recommends that the CPUC approve the Amended and Revised Second Amendment if it believes the additional CPV demand represented by this project is critical to obtaining the benefits that justified the original proposal.¹²

In the Resolution, the Commission approved cost recovery for the Amended PPA and described an expectation that the Project would utilize CPV panels, thereby conferring the benefits referenced above. The Resolution describes the Amended PPA as establishing a “target” of 67 MW of CPV panels to be used in constructing the Project.¹³ In the words of the IE:

⁹ SDG&E Advice Letter 2487-E-A (November 8, 2013), page 1.

¹⁰ SDG&E Advice Letter 2487-E-A (November 8, 2013), Public Version of Project-Specific Independent Evaluator Report, page 6-3.

¹¹ *Id.*, page 7-1.

¹² *Id.*

¹³ Resolution, page 2.

The **main benefit** of the Amended and Revised Second Amendment would be the economic development or technology diversity benefit from the CPV panels expected to be produced in San Diego, because **it will require Tenaska to use concentrating PV** for at least part of the plant. **That was the justification for the original contract approval¹⁴.**

As demonstrated above, there was a clear expectation that the Project would include some amount of CPV capacity, using panels manufactured at the Soitec facility in San Diego. Through the use of locally manufactured CPV panels, the Project was expected to provide technology diversity that was beneficial in light of the heavy deployment of conventional PV technology in California, and economic benefits, including the associated jobs, in the local community. The specific purpose of the Amended PPA was to reinstate a requirement that the Project deploy Soitec CPV technology. That specific purpose has been thwarted.

B. After the Resolution was issued, the developer again elected not to include any CPV panels in the Project, thereby eliminating use of the Soitec technology and the benefits that formed a basis for the Amended PPA

After the Resolution was issued, the developer of the Project again exercised an option to convert the Project to 100% PV panels.¹⁵ Contrary to the expectations described in the Advice Letter and the Amended IE Report, which formed the basis for approval in the Resolution, the Project is now being constructed without any CPV panels. The Resolution describes the 67 MW “target” for CPV panels, and notes the consequences of using “fewer than the target MW of CPV panels;” the Resolution does not mention the possibility that there could be zero MW of Soitec CPV panels. Again, the specific purpose of the Amended PPA was to reinstate the use of Soitec CPV panels into the Project; thus, it is a stretch to accept that the Commission would be

¹⁴ SDG&E Advice Letter 2487-E-A (November 8, 2013), Public Version of Project-Specific Independent Evaluator Report, page 7-13, fifth paragraph (emphasis added).

¹⁵ Exhibit 1, paragraph 4.

complacent toward and open to the possibility that under the Amended PPA the Project would again opt to deploy 100% PV. Since ultimately no Soitec CPV panels were used in the Project, no Soitec CPV was reinstated and the benefits associated with the deployment of Soitec CPV are now lost.

The complete elimination of CPV panels from the Project also has serious detrimental impacts on the new factory that Soitec built in San Diego. Soitec invested more than two hundred million dollars to build the factory in San Diego in reliance on the Amended PPA and other agreements for projects that would be built using Soitec's CPV panels.¹⁶ Soitec made this investment with the expectation that there would be 305 MW of CPV panels deployed in projects under contract to SDG&E, including the 150 MW Original PPA, which has now been converted to a PV-only facility.¹⁷ The expectation that formed the basis for Soitec's investment in California has not been realized. Following cancellation of the use of Soitec CPV panels for the Project, and cancellations and reductions of other expected deployments, deployment of the CPV panels manufactured in the San Diego factory have totaled only about 5 MW.¹⁸

This is particularly disappointing because Soitec lived up to its commitments in good faith, making significant financial investments in San Diego to provide technology diversity, skilled jobs and a state-of-the-art local manufacturing facility. Soitec built its factory according to stringent milestones that were set out in the Original PPA and the Amended PPA, as well as other PPAs that were intended to deploy CPV panels.¹⁹ Finally, Soitec hired 250 people to date

¹⁶ *Id.*, paragraphs 6 and 7.

¹⁷ *Id.*, paragraph 7.

¹⁸ *Id.*, paragraph 11.

¹⁹ *Id.*, paragraph 8.

to work at its facility in San Diego.²⁰ Soitec made these commitments and investments to the community in part to support construction of the Project using CPV panels; yet, the Project is proceeding without any CPV panels.²¹

Due to the foregoing, the Commission's goals of achieving technology diversity, promoting economic investment and creating jobs through the deployment of Soitec's CPV panels at the Project has been thwarted. The social and economic benefits of the new Soitec facility located in San Diego have been negated because it is not possible for Soitec to produce CPV panels at its factory without commitments to actually deploy the panels. While the Commission believed that it was approving a PPA that would foster one of the first utility-scale projects to use CPV modules and stimulate the San Diego economy by creating over 450 jobs, that has not occurred.

C. The Commission should modify the Resolution to require procurement of CPV panels in a quantity that restores the MW expected in the Original PPA

While it is now too late to include CPV panels in the Project, the Commission should require SDG&E to ensure that CPV panels are deployed in future projects in a quantity that restores the CPV capacity expected in the Original PPA. The Commission should modify the Resolution to add a condition to the approval granted therein specifying that, if the Project is built using 100% PV technology, then SDG&E must procure or cause to be procured a sufficient quantity of CPV capacity to restore the amount of capacity expected in the Original PPA. This would restore the quantity of Soitec CPV panels that Soitec assumed would be deployed in the Project, and that was the basis for Soitec's substantial economic investment in San Diego. Fulfillment of this condition would help save jobs, boost the San Diego economy, and promote

²⁰ *Id.*, paragraph 10.

²¹ *Id.*, paragraph 9.

technological diversity in California, consistent with the expectations underlying the Commission's approval of the Original PPA and the Amended PPA.

Soitec requests that the Commission modify the Resolution to add the following additional findings and conclusions, and the following additional condition:

Add new Finding and Conclusion number 11:

11. Use of the targeted number of CPV panels in the project provides important benefits through support for a local manufacturing facility that provides economic benefits to the local community, and by adding technology diversity in SDG&E's renewable portfolio.

Add a second ordering paragraph:

2. If the project identified in the power purchase agreement is built without incorporating any CPV panels, then San Diego Gas and Electric Company is hereby ordered to procure or cause to be procured a sufficient quantity of CPV capacity to restore the amount of capacity expected in the original power purchase agreement that was approved by the Commission in Resolution E-4446 on December 15, 2011.

III. PROCEDURAL MATTERS

This Application complies with all applicable procedural requirements. General Rule 7.8 of General Order 96-B states:

A Commission resolution issued under these rules is subject to petition for modification to the same extent and under the same procedures as provided, with respect to Commission decisions, by Rule 16.4 of the Commission's Rules of Practice and Procedure, except that the procedure for filing and serving such a petition is that provided under General Rule 7.7.2 above for filing and serving an application for rehearing.

Rule 16.4(b) of the Commission's Rules of Practice and Procedure requires a petitioner to concisely state the justification for the requested relief, propose specific wording to carry out all requested modifications, and support all allegations of new or changed facts with an appropriate declaration or affidavit. This Application satisfies each of these requirements. The justification

for Soitec's requested relief is set forth in Section II, above. Soitec's proposed wording to carry out the requested modification is specified in Section II(C) above. All of the new facts that help form the basis for this Application are supported by the Declaration of Clark Crawford attached hereto as Exhibit 1.

In addition, Rule 16.4(e) requires a petitioner that was not a party to the proceeding in which the decision proposed to be modified was issued to state specifically how the petitioner is affected by the decision and why the petitioner did not participate in the proceeding earlier. As described above, the Amended PPA approved by in the Resolution contemplated using CPV panels in the Project, thereby creating demand for panels manufactured by Soitec. Soitec thus had no reason to protest or respond to SDG&E's Advice Letters.

In reliance on the Amended PPA, and other PPAs for projects in Southern California, Soitec constructed a manufacturing facility and hired employees in the San Diego area.²² Subsequently, despite the fact that the Resolution recognized that Soitec CPV panels would be used for the Project, the developer exercised an option not to use any CPV panels.²³ As a result, Soitec is adversely affected by the approval of the Amended PPA in the Resolution (and the lack of a firm requirement for deployment of CPV panels) due to the effects on the San Diego factory, which employs more than 250 employees.

²² *Id.*, paragraphs 6, 7, 10.

²³ *Id.*, paragraph 4.

IV. CONCLUSION

For the reasons stated herein, the Commission should grant this Application, and modify the Resolution to add the finding and conclusion and the additional condition specified above.

December 5, 2014

Respectfully submitted,

/s/ Jerry R. Bloom

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Scoping Memo Information for (New) Applications

(Rule 4.2(a), Rule 1.3 and Article 7)

A. Category ¹ (Check the category that is most appropriate)

☐ **Adjudicatory** - “Adjudicatory” proceedings are: (1) enforcement investigations into possible violations of any provision of statutory law or order or rule of the Commission; and (2) complaints against regulated entities, including those complaints that challenge the accuracy of a bill, but excluding those complaints that challenge the reasonableness of rates or charges, past, present, or future.

☒ **Ratesetting** – “Ratesetting” proceedings are proceedings in which the Commission sets or investigates rates for a specifically named utility (or utilities), or establishes a mechanism that in turn sets the rates for a specifically named utility (or utilities). “Ratesetting” proceedings include complaints that challenge the reasonableness of rates or charges, past, present, or future. Other proceedings may also be categorized as ratesetting when they do not clearly fit into one category.

☐ **Quasi-Legislative** – “Quasi-Legislative” proceedings are proceedings that establish policy or rules (including generic ratemaking policy or rules) affecting a class of regulated entities, including those proceedings in which the Commission investigates rates or practices for an entire regulated industry or class of entities within the industry.

B. Are Hearings Necessary? ☐ Yes ☒ No

If “yes,” identify the material disputed factual issues on which hearings should be held, and the general nature of the evidence to be introduced

¹ See, California Public Utilities Commission Rules of Practice and Procedure, Rule 4.2(c), Rule 1.3 and Article 7. (<http://www.cpuc.ca.gov/PUC/Practitioner/Library.htm>) Rev. June 2013

Are Public Witness Hearings Necessary? ☐ Yes ☒ No

Public witness hearings are set up for the purpose of getting input from the general public and any entity that will not be a party to the proceeding. Such input usually involves presenting written or oral statements to the presiding officer, not sworn testimony. Public witness statements are not subject to cross-examination.

C. Issues—List here the specific issues that need to be addressed in the proceeding.

Modification of Resolution E-4613 (the “Resolution”) to add a condition requiring procurement of electricity from Soitec’s concentrating solar photovoltaic (“CPV”) technology in a quantity at least equivalent to the CPV capacity that was expected to be deployed in the original power purchase agreement (“PPA”) leading up to the Resolution in order to restore the technology diversity, economic benefits and jobs expected from the approved PPA, which have not materialized.

D. Schedule (Even if you checked “No” in **B.**, above) Should the Commission decide to hold hearings, indicate here the proposed schedule for completing the proceeding within 12 months (if categorized as “Adjudicatory”) or 18 months (if categorized as “Ratesetting” or “Quasi-Legislative”).

The schedule should include proposed dates for the following events as needed:

<u>1/19/15</u>	Prehearing Conference
<u>2/19/15</u>	Hearings
<u>3/13/15</u>	Briefs due
<u>3/20/15</u>	Submission
<u>4/20/15</u>	Proposed decision
<u>5/21/15</u>	Final decision

Docket Office Note: *The above information should be set forth either in the text of the complaint or, if this form is used, it should be inserted into the complaint packet after the signature(s) of the filer, but immediately prior to the commencement of any exhibits.*

End of Scoping Memo Information for (New) Applications Doc 344905 Access

EXHIBIT 1

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Application of Soitec Solar Industries LLC for
Modification of Resolution E-4613.

Application 14-12-____

(Filed December 5, 2014)

**DECLARATION OF CLARK CRAWFORD IN SUPPORT OF
APPLICATION OF SOITEC SOLAR INDUSTRIES LLC
FOR MODIFICATION OF RESOLUTION E-4613**

I, Clark Crawford, declare as follows under penalty of perjury:

1. My name is Clark Crawford. I am Vice President of Sales and Business Development, Solar Energy Division of the Soitec Group. My business address is 16550 Via Esprillo, San Diego, CA 92127.

2. I submit this declaration in support of allegations of new or changed facts pursuant to Rule 16.4(b) of the Commission's Rules of Practice and Procedure.

3. I have been personally involved in the relationship among Soitec Solar Industries LLC ("Soitec"), San Diego Gas and Electric Company ("SDG&E"), and CSolar IV West, LLC ("CSolar IV West") in connection with the power purchase agreement addressed in Resolution E-4613 ("Amended PPA").

4. In March 2014, CSolar IV West notified SDG&E of its intent to construct the 150 MW generating facility contemplated in the Amended PPA (the "Project") using 100% solar photovoltaic ("PV") panels. As a result the Project will not include any concentrating solar photovoltaic ("CPV") panels.

5. CSolar IV West is currently in the process of constructing the Project with 100% PV panels.

6. Soitec invested more than two hundred million dollars to build a CPV panel manufacturing factory in San Diego.

7. Soitec built the factory and made the investment with the expectation that there would be 305 MW of CPV panels deployed in projects under contract to SDG&E, including the 150 MW project that has now been converted to the PV-only Project through the Amended PPA.

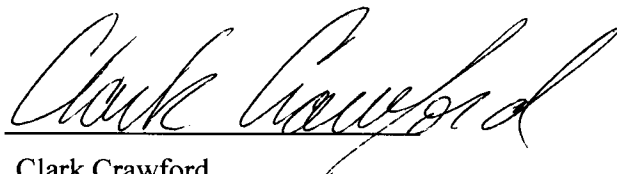
8. Soitec fulfilled its commitments to build the factory according to stringent milestones that were set out in several power purchase agreements intended to deploy CPV panels, including the Amended PPA and the original power purchase agreement that it modified.

9. Soitec made these commitments and investments in the community in part to support construction of the Project using CPV panels.

10. Soitec hired 250 people to date to work at the factory.

11. The expectation that formed the basis for Soitec's investment in California has not been realized. Following cancellation of the use of CPV panels for the Project, and cancellations and reductions of other expected deployments, deployment of the CPV panels manufactured in the San Diego factory have totaled only about 5 MW.

I declare under penalty of perjury under the laws of California that the foregoing is true and correct and that this declaration was executed on December 5, 2014, at Sacramento, California.



Clark Crawford